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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,720	03/19/2004	Stephen Dull	10761.1527-00	7513
81331	7590	08/05/2009		
Accenture/Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Avenue Washington, DC 20001-4413			EXAMINER	
			PARKER, BRANDI P	
			ART UNIT	PAPER NUMBER
			3624	
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			08/05/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/804,720

**Applicant(s)**

DULL ET AL.

**Examiner**

BRANDI P. PARKER

**Art Unit**

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-14 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) 7, 15-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-14 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Acknowledgements***

1. This is a second non-final office action in response to the communications filed on 4/23/2009.
2. Claims 1-6, 8-14 and 27-30 are pending in this Office Action. Claims 7 and 15-16 are cancelled. Claims 18-26 are subject to the restriction requirement and are withdrawn from consideration.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-6, 8-14 and 27-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1 and 9 are directed towards a method for quantifying brand development opportunities for a particular brand, however, the claims further recite providing a system with corresponding structure. The claims are directed to neither a "process", "product" nor a "machine," but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of

invention in the alternative only. MPEP 2173.05(p) II. Claims 1 and 9 are directed towards non-statutory subject matter and is therefore rejected under 35 U.S.C. 101.

5. Claims 2-6, 8 and 10-14 are rejected for being dependent upon rejected claim 1 and 9 respectively.

6. Claim 27 is directed towards a computer readable medium having computer readable program code embodied therein, however, the claim further recite providing a system with corresponding structure. The claims are directed to neither a "process", "product" nor a "machine," but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. MPEP 2173.05(p) II.

7. Claim 28 is rejected for being dependent upon rejected claim 27.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 1-6, 8-14 and 27-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject

matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, claims 1, 9, 27 and 29 were amended to add specific details regarding a particular processor, elements about distinct software modules, as well as memory to store the data and instructions.

10. Claims 2-6, 8, 10-14, 28 and 30 are rejected for being dependent upon rejected claims 1, 9, 27 and 29 respectively.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 1-6, 8-14 and 27-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. Claims 1, 9 and 27 are directed towards a method for quantifying brand development opportunities for a particular brand and a computer readable medium with code embodied therein, however, the claims further recite providing a system with corresponding structure. A single claim which purports to be both a product or machine and a process is ambiguous and is properly rejected under 35 USC 112, second

paragraph, for failing to particularly point out and distinctly claim the invention. *Ex Parte Lyell*, 17 USPQ2d 1548 (B.P.A.I. 1990).

14. Claims 2-6, 8, 10-14 and 28 are rejected for being dependent upon rejected claims 1, 9 and 27 respectively.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 1-8, 8-14 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phelan et al (US 2004/0093296) in view of the June 1999 David Haigh publication "Understanding the Financial Value of Brands" and passages from the 2002 book written by Debashis Pati entitled "Marketing Research".

17. With respect to claims 1-8, 8-14 and 27-30, Phelan teaches:

a. providing a system comprising a processor, at least one memory to store data and instructions, a display device, a user interface, and distinct software modules embodied on a computer-readable medium (paragraph 0051-0052, regarding market client system structure);

- i. wherein the distinct software modules comprise a first analysis tool module, a second analysis tool module, and a regression analysis tool module (paragraph 0134, regarding marketing analysis system; paragraph 0127, regarding regression analysis); and
- ii. wherein the distinct software modules are configured to access the at least one memory for data and instructions and, when executing the instructions, to perform the computer-implemented steps on the processor of: executing a first analysis by the first analysis tool module; executing a second analysis by the second analysis tool module; a third analysis, by the regression analysis tool module (paragraph 0145, regarding linking a first guided analysis with a second or multiple analysis; paragraph 0127, regarding regression analysis).
- iii. determining, by the regression analysis tool module, brand loyalty or image factors and information (paragraph 0127, regarding statistical regression analysis on the model factors)

Phelan teaches the statistical and probability analysis, as well as the modeling of consumer behavior response to marketing efforts of brands. Phelan does not explicitly teach an image/equity, customized brand pyramid, trade-off, econometric or brand conversion analysis tool modules or outputting a display of brand factors. However, Haigh teaches:

iv. wherein the first analysis tool module and the second analysis tool module are chosen from the group comprising: an image/equity analysis tool (page 26-29, regarding brand equity analysis), a brand pyramid analysis tool (page 37-39, regarding brand pyramid analysis), a trade-off analysis tool (page 12, regarding trade-off analysis), a probability simulator (page 42-43, regarding "what-if" scenarios), an econometric analysis tool (page 26, regarding econometric modeling of empirical data), a behavioral analysis tool (page 28, regarding a brand's future performance based on consumer behavior), and a brand pyramid conversion analysis tool (page 39-42 regarding brand conversion profile).

The brand pyramid in Haigh consists of 5 tiers and does not expressly state that additional tiers can be added to make the pyramid customizable. However, the concept of a brand pyramid can be implemented with any tiers that represent any metric or brand measurement for a particular company or industry, and the brand pyramid analysis provided in the Haigh can be repeated for each additional tier that may be added. Therefore, it would have been obvious to one with ordinary skill in the art to make the brand pyramid customizable for a particular company or industry.

It would have been obvious to one of ordinary skill in the art to include the business system of Phelan with the ability to teach an image/equity, customized brand pyramid, trade-off, econometric or brand conversion analysis tool modules as taught by



Haigh since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Phelan in view of the Haigh article does not directly teach outputting a display of brand factors or an image perceptual map. However, Pati teaches the output and display of image perceptual maps of brand factors (page 139-141, regarding multi-dimensional scaling and perceptual maps), and identifying and quantifying the brand development opportunities based on the display (page 139-141, regarding multi-dimensional scaling and perceptual maps for brands).

It would have been obvious to one of ordinary skill in the art to include the business system of Phelan in view of Haigh with the ability to display image perceptual maps of brand factors as taught by Pati since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

### ***Conclusion***

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley B. Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/  
Examiner, Art Unit 3624

/Bradley B Bayat/  
Supervisory Patent Examiner, Art Unit 3624